IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.672 OF 2007
IN
NOTICE OF MOTION NO.2469 OF 2007
IN
SHORT CAUSE SUIT NO.2448 OF 2007

The D.N.Nagar Ratnasamuh (HIG)
Co-operative Housing Society Ltd. ...Appellant

Versus

Sahyadri Advertising ...Respondent

Shri H.S.Shreepad Murthy for the Appellant.

Shri Shashipal Shankar for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : OCTOBER 30th, 2007.

P.C.:

1. By this Appeal from Order the original defendants have taken an exception to ad-interim order dated 13th July, 2007 passed by the trial Court by which ad-interim injunction has been granted against the Appellant.

2. The learned counsel appearing for the appellant submitted that on plain reading of the plaint the suit filed by the respondent-plaintiff is not maintainable in law. He submitted that in such a suit which is not maintainable, the learned trial Judge has granted drastic ad-interim relief. He submitted that there is enough explanation on record for the acceptance of the

cheques issued by the plaintiffs and that is no ground to grant injunction.

3. The Notice of Motion taken out by the respondent is still pending. The ad-interim order passed by the trial Court which is impugned in this Appeal is operating from 13th July, 2007. The issues which are canvassed by the counsel for the appellant will have to be canvassed before the trial Court in the pending Notice of Motion. Interests of justice will be served if Notice of Motion is ordered to be decided in a time bound schedule. As ad-interim order is operating from July 2007, no case is made out for interference at this stage. It is clear that all the findings recorded by the trial Court are tentative findings for limited purpose of considering the prayer for ad-interim relief. The trial Court is bound to decide the Notice of Motion independently and without being influenced by the tentative findings recorded in the ad-interim order. It is obvious that the trial Court is bound to consider the contention of the appellant regarding maintainability of the suit.

4. Hence, I pass the following order:

(i) Subject to what is stated above, the Appeal is

dismissed.

(ii) The trial Court is directed to decide Notice of Motion as expeditiously as possible and in any event on or before 06th December, 2007.

(iii) All contentions of the parties in the pending Notice of Motion and Appeal are expressly kept open.

(iv) Parties to act upon an authenticated copy of this order.

JUDGE